

**Burns Electronic Security Services, Inc. and The Connecticut Union of Telephone Workers, Inc.**  
Cases 1-CA-13904, 1-CA-13943, and 1-RC-14565

June 23, 1981

**SUPPLEMENTAL DECISION AND ORDER**

On September 28, 1979, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.<sup>1</sup> Therein, the Board, in agreement with the Administrative Law Judge, found that Respondent had violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain with the Union and by unilaterally changing the working conditions of its employees without prior bargaining with the Union. The Board also adopted the Administrative Law Judge's finding that Respondent violated Section 8(a)(1) by interrogating its employees as to the identity of employees who may have filed unfair labor practice charges against Respondent.

Thereafter, Respondent filed a petition to review the Board's Order in the United States Court of Appeals for the Second Circuit, and the Board filed a cross-petition seeking enforcement of its Order. On June 18, 1980, the court issued its opinion<sup>2</sup> denying enforcement of the Board's Order with respect to the Board's finding that Respondent independently violated Section 8(a)(1) by interrogating its employees regarding the filing of the unfair labor practices charge. The court also found that the record developed at the original representation hearing was deficient in light of the "new and relevant information introduced at the unfair labor practice hearing" and that the original certification was based on an inadequate record.<sup>3</sup> Under ordinary circumstances, the court asserted, it would be proper for the Board to apply the principle of administrative *res judicata* and not relitigate the unit certification issue within the context of a subsequent unfair labor practice hearing;<sup>4</sup> however, the court concluded "that in the unusual circumstances of this case the Board should have reconsidered the unit certification in light of the entire record [both the record developed at the original representation hearing and that developed at the unfair labor practices hearing]. Therefore, the court

remanded the case to the Board for reconsideration on the entire record "of the issue of whether the Operator/Runners in the Bridgeport, Hamden and New Haven unit are guards within the meaning of Section 9(b)(3) of the Act."<sup>5</sup> The court added, however, that "In so doing, we express no opinion on the merits of this question; nor do we preclude the Board, in its discretion, from reopening the record for presentation of further evidence."

Thereafter, the Board accepted the court's remand and invited the parties to submit statements of position with respect to the issues raised by the remand. Respondent filed such a statement. The General Counsel and the Charging Party did not file statements but relied on their earlier briefs in the matter. The parties agreed that, as the record incorporating evidence developed both at the representation and unfair labor practices hearings was sufficient, there was no need for the Board to reopen the record for further evidence at an additional hearing.

The Board has reviewed the entire record including Respondent's statement of position and the court's decision, and has accepted, as the rule of law governing disposition of this case, the court's conclusion that, in the "unusual circumstances of this case," the Board was in error in its original decision in applying the rule against relitigation of representation issues in an unfair labor practice proceeding.<sup>6</sup> Therefore, the sole issue for determination now is whether on the entire record, including both the representation and unfair labor practices hearings, Respondent's Operator/runners located at the New Haven Central Station and its satellite station at Bridgeport, in Connecticut, are guards within the meaning of Section 9(b)(3) of the Act. For the reasons set out below, we find that they are, and that the complaints and underlying

<sup>5</sup> The parties stipulated that the employees at Respondent's Hamden facility were not guards. These employees install and maintain alarms.

<sup>6</sup> Another factor which the court asserts led it to conclude that reconsideration was warranted was the Board's failure to address the "apparent inconsistency between the classification of the Operator/runners in the present case and in the three other Board decisions involving the Company," wherein the Board found to be guards employees performing allegedly the same duties as the operator/runners herein. See *Burns Electronic Security Services, Inc. and International Union, United Plant Guard Workers of America*, Case 1-RC-13752 (May 29, 1975, not reported in volume of Board Decisions); *Burns Electronic Security Services, Inc. and Local 376, United Automobile, Aerospace and Agricultural Implement Workers (U.A.W.)*, Case 1-RC-13413 (September 25, 1974, not reported in volume of Board Decisions); *Burns Electronic Security Services, Inc. and Communications Workers of America, AFL-CIO*, Case 3-RC-5295 (January 19, 1975, not reported in volume of Board Decisions). In this regard the court noted that "although the Regional Director purported to distinguish [the above and other cases] in ruling that Operator/Runners were not guards, these distinctions are not necessarily persuasive and to some extent appear to conflict with findings made by the [Administrative Law Judge] in the course of the unfair labor practice proceeding."

<sup>1</sup> 245 NLRB 142. For purposes of this Decision and administrative consistency, we hereby consolidate Case 1-RC-14565 with the instant proceeding. The Decision and Direction of Election in that case was issued by the Regional Director for Region I. We denied Respondent's petition for review and request for reconsideration of that denial.

<sup>2</sup> 624 F.2d 403.

<sup>3</sup> E.g., the Hearing Officer failed to obtain a complete job description for operator/runners.

<sup>4</sup> See, e.g., *Pittsburgh Plate Glass v. N.L.R.B.*, 313 U.S. 146 (1941).

petitions for an election should therefore be dismissed.

Respondent, Burns Electronic Security Services, Inc. (BESSI), a wholly owned subsidiary of Burns International Security Services, Inc., is a Delaware corporation with approximately 22 central stations and satellites throughout the United States, including the New Haven Central Station, and the satellite station at Bridgeport.

Respondent installs, maintains, and monitors electronic sensory alarms, including burglar alarms, fire alarms, holdup alarms, waterflow alarms for sprinkler systems, and industrial process alarms. Signals from these alarms go either to Respondent's New Haven or Bridgeport facility. The New Haven Central Station operates continuously, 7 days a week, 24 hours a day, with a complement of 18-bonded operator/runners. The Bridgeport satellite station is equipped with monitoring devices that are connected to and operated by the New Haven Central Station. The Bridgeport station is in operation from 4:30 p.m. until 8 a.m., Monday through Friday and around the clock on Saturday and Sunday. There are five bonded part-time operators/runners at the Bridgeport satellite who perform primarily as runners but do not operate the electronic system, except in the rare event that the line between New Haven and Bridgeport fails.

Although the primary function of the operator/runner is to monitor the opening and closing of customers' premises, 60 percent of Respondent's customers' contracts require dispatching an operator/runner to a customer's premises in response to an alarm; and 25 percent of the alarm responses received by Respondent (about 5 calls a day) involve such a dispatch. These calls ordinarily occur outside the customer's normal open periods.

BESSI issued policies and procedures applicable to all its stations which are to be followed at the individual station exactly as written. In addition, the New Haven central station and its Bridgeport satellite are accredited by the Underwriters Laboratories, Inc. (UL); consequently, operator/runners are subject to the job descriptions and standards found in the UL service manual "Standards for Safety—Central Station Burglar Alarm Units and Systems."<sup>7</sup> Both BESSI and UL standards require operator/runners (referred to in the manual as "guards") to be equipped with a pistol or night stick, flashlight, police whistle, and identification

badge, and to wear a uniform and headgear which readily identifies their company affiliation. When dispatched in response to an alarm, the manual states that unless the central station receives an arrival signal from an operator/runner at the customer's premises within 15 minutes from the receipt of the burglar alarm an additional operator/runner will be dispatched.<sup>8</sup> After the operator/runner arrives at the customer's premises, he is required by the BESSI procedure manual to "proceed to look for any signs of forcible entry or evidence of a burglarious attack. If police are at the scene, cooperate with them in an exterior examination. Following an exterior examination, enter the premises if keys are available and if no abnormal conditions exist."<sup>9</sup> In addition, a UL standard requires that during the search the operator/runner "shall obtain satisfactory evidence of the identity [of those] found on the premises."<sup>10</sup> After the interior search has been completed, the operator/runner is required to do all that is necessary to secure the premises and restore the protective system; and until adequate protection can be restored, the UL requires that an operator/runner patrol the subscriber's premises hourly.

We conclude from the foregoing that operator/runners are guards within the meaning of Section 9(b)(3) of the Act.<sup>11</sup> Although most of their time is spent in the office monitoring alarms, when dispatched to a customer's premises in response to an alarm, an essential part of the operator/runner's job is to do whatever is necessary to insure that the premises are continuously protected.<sup>12</sup> As the Board said in *Walterboro Man-*

<sup>8</sup> According to BESSI policy, operator/runners are required to make exterior searches and to enter the employer's premises to ascertain whether there has been an entry regardless of whether the police have arrived. However, the practice appears to be that each operator/runner exercises his own discretion as to whether he enters with or without the police.

<sup>9</sup> With respect to responding to a holdup alarm, the police are notified immediately; however, the operator/runner is not dispatched to the premises until at least 15 minutes has elapsed to prevent the operator/runner from getting involved in the crime.

<sup>10</sup> The BESSI procedure manual advises operator/runners that "[b]urglars or intruders are to be placed in the custody of the police. If the BESSI employee observes a crime being committed, the offender shall be detained and the police notified."

<sup>11</sup> See *American District Telegraph Co. of Cleveland*, 160 NLRB 1130, 1136-37 (1966). There is uncontradicted testimony that on occasion operator/runners have apprehended intruders on their own. We also note that the standard contract Respondent has with its customers provides for false arrest insurance.

<sup>12</sup> It is clear from our review of the BESSI instruction manual of 1969 and the UL standards manual that Respondent's operator/runners are required to assist the police in apprehending intruders and to obtain satisfactory evidence of the identity of those found on the premises. Thus, unlike the Regional Director in his Decision and Direction of Election, we find that the operator/runners herein meet the "potential confrontation" test set forth in *Wells Fargo Alarm Services, A Division of Baker Industries, Inc.*, 533 F.2d 17 (3d Cir. 1976), enfg. 218 NLRB 68 (1975), and that their duties are the same as those of their counterparts in Buffalo.

*Continued*

<sup>7</sup> Subscribers to UL accredited protection services receive substantial discounts on insurance premiums, a feature which is highly promoted by the BESSI stations in their advertising and which gives BESSI accredited stations a competitive edge in attracting customers. Thus, BESSI accredited stations are careful not to jeopardize their accreditation by being "gigged" for their operator/runners' neglect of UL standards, during the surprise inspections conducted periodically by UL.

*ufacturing Corp.*, 106 NLRB 1383, 1384-85 (1953), "it is the nature of the duties of guards and not the percentage of time spent in such duties which is and should be controlling."

In the underlying representation proceeding and our original decision with respect to the unfair labor practice proceeding which followed, the unit found appropriate was:

All employees of the Employer employed at its New Haven, Bridgeport, and Hamden, Connecticut facilities, including dispatch operators, operator runners, installers, service salesmen, managerial employees, and supervisors as defined in the Act.

Section 9(b)(3) of the Act prohibits the Board from:

. . . decid[ing] that any unit is appropriate . . . if it includes, together with other employees, any individual employed as a guard to enforce against employees, and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which

admits to membership, employees other than guards.

Thus, having found that operator/runners are guards within the meaning of Section 9(b)(3), we find that the unit certified in Case 1-RC-14565 is not and cannot be appropriate since as constituted it includes both guard and nonguard employees. We find, therefore, that the petition in that case raised no real question concerning representation and thus Respondent was not obligated to bargain with the Union with respect to any of the unit employees, including the operator/runners. Accordingly, its refusal to bargain with the Union concerning the unit employees, and any unilateral changes it may have made with regard to the terms and conditions of employment of the operator/runners did not violate the Act. We shall therefore dismiss the complaints and the underlying petition.<sup>13</sup>

### ORDER

It is hereby ordered that the Regional Director's Decision and Direction of Election in Case 1-RC-14565 be vacated and the certification revoked, and that the petition therein be, and it hereby is, dismissed.

IT IS HEREBY FURTHER ORDERED that the complaints issued in Case 1-RC-13904 and 1-CA-13943 be, and they hereby are, dismissed.

New York, and Hartford, Connecticut, who were found by the Board to be guards. See fn. 6, *supra*.

<sup>13</sup> The dismissal of the petition should not be construed to prohibit the Union from filing a petition for an election concerning the nonguard employees at Respondent's New Haven, Bridgeport, and Hamden facilities, provided it is supported by a sufficient showing of interest.